

M213DOUF

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 285 (GBD)

5 LAURENCE F. DOUD III,

6 Defendant.

Trial

7 -----x

8 New York, N.Y.
9 February 1, 2022
10:00 a.m.

10 Before:

11 HON. GEORGE B. DANIELS,

12 District Judge
13 -and a Jury-

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

18 BY: NICOLAS T. ROOS

ALEXANDRA ROTHMAN

THOMAS S. BURNETT

Assistant United States Attorneys

19 ROBERT C. GOTTLIEB

20 DERRELLE M. JANNEY

PAUL R. TOWNSEND

Attorneys for Defendant

21 Also Present: Sunny Drescher

22 Jacqueline Hauck

Paralegal Specialists

23 Special Agent George Burdzy, DEA

24 Investigator Kathleen Whitmore, DEA

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(Trial resumed; jury not present)

THE COURT: Good morning. Are we waiting on the rest of your team?

MR. ROOS: She's just in the elevator.

THE COURT: There may be one issue before we proceed. Mr. Enquist, Juror No. 14, what would be Alternate No. 2, called last night and said his two kids tested positive for COVID. He has tested, he tested negative last night, and he tested negative this morning. But, as of last night he quarantined himself in a hotel, and I told him that he should simply await further instructions from me.

My intention is to go ahead and proceed without him and excuse him, particularly since he's only the second alternate out of the four alternates that we anticipate, if everyone shows up today, we'll excuse those last three or four jurors. Okay?

So, anyone have any other suggestion?

MR. GOTTLIEB: No, your Honor.

THE COURT: So, as soon as we have all of our 15 jurors, we will continue.

MR. ROOS: He didn't come in today?

THE COURT: He didn't come in. He is in a hotel quarantined for now. As I said, he's tested negative last night and this morning. But out of caution, he's quarantining.

All our jurors are here. We're bringing them up.

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Rebuttal - Ms. Rothman

1 Let's bring the jury in.

2 (Jury present)

3 THE COURT: Ladies and gentlemen, as I'm sure you
4 noticed, Mr. Enquist is not with us today. Unfortunately, his
5 two children tested positive for COVID yesterday. He has
6 tested negative. He tested negative last night, and he tested
7 negative this morning, so, but he has out of an abundance of
8 caution quarantined himself at a hotel while his kids are
9 being, their illness is being dealt with.

10 So, since we need 12 jurors to deliberate, we are
11 going to proceed without him. I'm going to excuse him from any
12 further jury service, and we will proceed as we anticipated
13 that we were going to proceed.

14 So we'll now have the government's rebuttal and then
15 I'll instruct you on the law, and hopefully by lunch time
16 you'll be in the jury room to begin your deliberations.

17 Ms. Rothman.

18 MS. ROTHMAN: Thank you, your Honor.

19 Good morning. We're almost done. This is the
20 beginning of the end. I'm going to speak for a bit, Judge
21 Daniels will instruct you on the law, and then you'll begin
22 your deliberations.

23 I want to start with two promises. First, I'm not
24 going to be as long as Mr. Roos or Mr. Gottlieb were yesterday.
25 I promise you that. And second, I'm not going to respond to

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Rebuttal - Ms. Rothman

1 everything that Mr. Gottlieb said when he spoke to you. He
2 made a whole lot of arguments, and you know a lot of them just
3 don't make sense. You know that. You sat through this trial,
4 you listened to the witnesses, you looked at the documents.
5 You know what Mr. Gottlieb told you just doesn't add up.

6 What we're going to do this morning together is talk
7 about some of that evidence. Now, as you know, the government
8 bears the burden in this case. The defendant has no burden,
9 the government has the burden and we embrace that burden. But
10 when the defendant, when his attorneys make arguments, you
11 should scrutinize those arguments. You should ask yourself,
12 why is Mr. Gottlieb telling me this? What is he leaving out?
13 And I think what you'll see is most of what you heard yesterday
14 was a distraction.

15 As I listened to Mr. Gottlieb yesterday, and I
16 listened carefully to hear what he was trying to say, what he
17 didn't address, what he had no answers to, I was struck by the
18 fact that Mr. Gottlieb conceded, conceded that RDC's customers
19 were bad. Bad pharmacies, that filled prescriptions written by
20 bad doctors. No one is disputing that RDC's customers were
21 diverting controlled substances. ProHealth, Linden Care,
22 Aliton's, Bay Ridge, Regal Remedies, Old Town, Mr. Roos walked
23 you through those pharmacy examples, and it was conceded in the
24 defense summation.

25 What else? Mr. Gottlieb also conceded that the

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Rebuttal - Ms. Rothman

1 employees in RDC's compliance department intentionally shipped
2 drugs to those pharmacies, and others, knowing they were being
3 diverted. The defense summation did not argue otherwise, so
4 that's not in dispute.

5 Instead, Mr. Gottlieb is trying to convince you that
6 the defendant had nothing to do with this. The defendant's
7 actions were not a crime. That's really what he said.

8 Mr. Gottlieb is asking you to believe that the
9 defendant had no idea what was going on, despite the fact that
10 two of his employees, one who pled guilty to conspiring with
11 the defendant to commit these crimes, came into court, sat on
12 that witness stand, under oath, and told you the defendant
13 knew, told you the defendant knew everything, told you they
14 broke the law at the defendant's direction.

15 Mr. Gottlieb's tried to tell you the defendant was
16 blind to all of that. That's the story you have to buy.

17 But ladies and gentlemen, the defendant was the CEO,
18 the big boss. And he wasn't one those CEOs that sat in his
19 office all day. No. He walked the floor. He walked the
20 warehouse. He knew everyone's name. He spoke to customers, he
21 knew about customers' orders. You think he never made it to
22 the compliance department? Of course he did. You think he
23 took a hands off approach on how RDC shipped its controls?
24 Products that made him half a million dollars, put it in his
25 pocket? Of course he didn't.

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Rebuttal - Ms. Rothman

1 Mr. Gottlieb wants to blame everybody else. The DEA,
2 the pharmacists, the doctors, the manufacturers. Even the
3 government. The prosecutors at this table. He wants to claim
4 the defendant is the scapegoat for the opioid epidemic.

5 But ladies and gentlemen, this case isn't about any of
6 that. There will be other trials for doctors, for pharmacists,
7 for manufacturers. Today, it's about one person. The
8 defendant. It is about what he did. His choices, his crimes,
9 his actions.

10 So let me start by responding to a few things
11 Mr. Gottlieb said or showed you that are simply not true,
12 designed instead to distract you or confuse you.

13 Mr. Gottlieb told you that Bill Pietruszewski had
14 authority and power in the compliance department. And he
15 showed you four e-mails, A54, A62, A68, B8. But here's the
16 thing. None of those e-mails say anything about
17 Pietruszewski's power in the compliance department. A54 is
18 about Specialty Care Pharmacy, a pharmacy the defendant turned
19 back on. A62 is about Waschko's, a pharmacy that gets raided
20 by the DEA.

21 Ms. Hauck, can you please pull up Defense Exhibit A62.
22 Let's look at the bottom part of that e-mail.

23 So look at this document. The DEA's putting computers
24 and files in clear bags. And what does Pietruszewski do? He
25 asks, I am not sure do. We want to place them on do not sell?

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Rebuttal - Ms. Rothman

1 Is that someone who has power and authority? He's being told
2 the DEA raided this pharmacy, and he's asking what to do.

3 We can take that down.

4 A68. That's about Plainfield. You heard a lot about
5 Plainfield. Here's the short story. The DEA investigates
6 Plainfield, tells RDC about it, and they shut them off. Says
7 nothing about Pietruszewski's power.

8 And B8, that's about Casey's Prescription Pad. Again,
9 that's a pharmacy the defendant turned back on.

10 So these e-mails, the ones you were quoted by
11 Mr. Gottlieb, say nothing about Pietruszewski's power in the
12 compliance department.

13 But you know what does? Something that Mr. Gottlieb
14 didn't mention to you once during his closing arguments
15 yesterday? It's that March 2015 sales meeting. You remember
16 that meeting. January 2015, a new policy comes out,
17 Pietruszewski introduces it to the salespeople. And what
18 happens? That man, the defendant, scolds him. Yells at him.
19 That's what happened. Mr. Gottlieb has no response to that
20 meeting.

21 So you want to know who was running the compliance
22 department? Who had the power? It's the defendant. Not
23 Pietruszewski.

24 Something else Mr. Gottlieb said yesterday that's also
25 simply not true. He said there is no evidence before you as to

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1 what happened in 2017 with the pharmacies that RDC cut off.

2 Really? No evidence? Let's pull up the transcript, page

3 468-469. I am going to read what Ms. Pompeo said.

4 "Q. What, if anything, changed in the compliance department's
5 practice in the year after Doud left the company?

6 "A. We immediately started to analyze dispensing reports again
7 before turning customers on for controlled substances. We
8 started reporting suspicious customers and suspicious orders.
9 We started ensuring that we were collecting dispensing reports
10 and analyzing them on existing customers as well."

11 Let's go to the next page. Line 1.

12 "Q. Why did that change?

13 "A. Because it was required of us to do so, and we could now
14 do it freely."

15 Let's go to the bottom of line 9.

16 "Q. What do you mean you could now do it freely?

17 "A. We didn't -- well, with Larry not being there, we didn't
18 have to not analyze dispensing anymore before turning an
19 account on. Because management had changed and their
20 authorization changed, we didn't have to get approval to take
21 action on pharmacies anymore."

22 So what changed? The defendant was gone.

23 We can take that down.

24 Another distraction you heard is that the DEA is to
25 blame. Mr. Gottlieb talked about that DEA conference that

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1 didn't get rescheduled, that didn't happen. He's asking you to
2 believe that if that conference had happened, Doud and the
3 compliance department wouldn't have been confused and would
4 have done what they were supposed to do, should have done.
5 This argument makes no sense for a bunch of reasons. Let me
6 just give you two.

7 First, ask yourself who didn't you hear those
8 complaints from about being confused and not knowing what to
9 do? Pietruszewski and Pompeo, the folks who were doing the
10 defendant's dirty work every day in the compliance department.
11 They knew their obligations. They knew what they were supposed
12 to be doing. They didn't need a paint by numbers guide from
13 the DEA, and neither did the defendant. All they needed was a
14 CEO who wanted to follow the rules.

15 And second, immediately after Doud left the company,
16 RDC started filing suspicious order reports, hundreds of them,
17 to be precise. Let's pull up Government Exhibit 903, at page
18 16.

19 This chart doesn't show confusion. It doesn't show
20 people not knowing what they're supposed to be doing. It
21 shows, when the defendant leaves, they start following the law.
22 It's that simple.

23 We can take that down.

24 Now, what was another distraction you heard yesterday?
25 Well, Mr. Gottlieb rattled off a list of people you didn't hear

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1 from at this trial. Joe Brennan, Amy Skibickyi, Liz Cullen,
2 Julius Morton. Let me just say two things. First, as I expect
3 Judge Daniels will instruct you, each party had an equal
4 opportunity or lack of opportunity to call any witness. And of
5 course the defendant has no burden, but let's be clear, did you
6 want to be here any longer? Did you want to see more exhibits?
7 More bad pharmacy charts? More charts? More documents about
8 the defendant's bonus? You have seen sufficient evidence to
9 return a verdict of guilty.

10 What about the lawyers? Well, maybe that's the
11 biggest distraction you heard yesterday. Here's the argument.
12 The defendant paid \$30,000 for lawyers, so he can't be guilty.
13 If it were that easy to get away with crimes, think about all
14 the things people could do. Just put a lawyer on payroll. And
15 let's be clear, the defendant didn't even do that. It was a
16 few months, \$30,000, and it was the company's money, not the
17 defendant's.

18 But here's more to the point, what you really need to
19 think about. That \$30,000 was a drop in the bucket compared to
20 all the money the defendant was making by selling controlled
21 substances.

22 Let's look at Government Exhibit 913, slide eight.
23 That's ProHealth, a pharmacy you heard a lot about during this
24 trial. About \$6 million RDC made from this pharmacy alone. So
25 just do the math. The numbers speak for themselves.

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1 Ladies and gentlemen, this is only one pharmacy. You
2 heard from Professor Cutler, RDC made about \$800 million in
3 controlled substances sales and the defendant made more than a
4 half million dollars in his bonus. It's that simple.

5 You can take that down.

6 Here's one other thing. The defendant didn't follow
7 the advice his lawyers gave him. Not only with Pro Compliance
8 or beefing up the compliance department. But remember, the
9 lawyers said don't turn on new accounts before you analyze
10 dispensing. And what did the defendant do? He did it anyway.
11 So lawyers, that's another distraction.

12 So, now I want to get into the substance of what you
13 heard yesterday from Mr. Gottlieb. Mr. Gottlieb spent a lot of
14 time talking about what he called criminal intent. He told
15 you, if the defendant, Pompeo, Pietruszewski, didn't want
16 diversion to happen, then there's no conspiracy. That's wrong.
17 Plain and simple. I don't expect what Mr. Gottlieb told you to
18 be anywhere in Judge Daniels' instructions, and you should
19 listen to Judge Daniels on what the law is.

20 I expect Judge Daniels to ask this basic question:
21 Did the defendant participate in a conspiracy knowing its
22 unlawful purpose and with the specific intent of furthering its
23 objectives? That's what it means to be in a conspiracy. To
24 know you and other people are doing something unlawful, and to
25 act intentionally to bring it about.

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1 There are two parts to that question. Knowledge of
2 the unlawful purpose, and specific intention of furthering its
3 objective. So let's take them one by one.

4 I expect Judge Daniels will tell you that knowledge
5 just means acting not by mistake or by accident. So here's the
6 question. Did Doud know that RDC was illegally distributing
7 controlled substances? And the answer is yes. There are two
8 ways to get there. First, he had direct knowledge.
9 Pietruszewski, Pompeo and others told him about bad pharmacies
10 that RDC was supplying, and at Doud's direction RDC kept
11 shipping them pills. That's knowledge, plain and simple.
12 Second, even if Doud didn't have actual knowledge, he
13 consciously avoided learning about the diversion happening at
14 the pharmacies. That just means he put his head in the sand.
15 He ignored the red flags. And ladies and gentlemen, RDC
16 literally has things called red flags in their policies.

17 Let's pull up Government Exhibit 276 at page seven.
18 Section D. Red flags. Black and white. He saw the red flags
19 and he ignored them. He knew about them, he consciously
20 avoided knowing them, so that makes him also guilty.
21 Knowledge.

22 The question here is are they selling drugs illegally?
23 And you know they are, because you heard the evidence of
24 diversion.

25 We can take that down, Ms. Hauck. Thank you.

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1 You also heard they weren't maintaining effective
2 controls against diversion. Distributors have an obligation to
3 maintain effective controls against diversion. Companies can
4 only sell these dangerous pills if they maintain these
5 controls. And you heard at the defendant's direction, they
6 intentionally set aside effective controls against diversion
7 for certain customers. That's knowledge.

8 Let's focus on the second part of that question. Did
9 the defendant have the specific intention of furthering the
10 conspiracy's objectives? I expect Judge Daniels will tell you
11 intentionally just means deliberately. Did the defendant act
12 deliberately in furthering the object of the conspiracy to
13 illegally distribute controlled substances? Of course he did.
14 How do you know that? Because he intentionally told
15 Pietruszewski and Pompeo to keep shipping these controls to bad
16 pharmacies, knowing the pills were being sold illegally.

17 Now, compare that to what Mr. Gottlieb told you
18 yesterday. What he wants you to think is that as long as the
19 defendant didn't want drugs to be diverted, so long as he had
20 some other reason for breaking the law, like making money, or
21 keeping customers happy, then he can't be guilty. And I don't
22 expect that's what Judge Daniels will tell you, and it doesn't
23 really make much sense.

24 Think about it for a minute. Does it make sense that
25 the defendant could know his employees were selling drugs

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1 illegally, deliberately help them to do it by directing their
2 actions, but not get in trouble because his main goal was to
3 make money? Of course not.

4 Think about this. Remember Mr. Gottlieb went on and
5 on about how bad of a person Michael Paulsen was. Let's be
6 clear. Paulsen is a bad person. He committed serious crimes,
7 he pled guilty to those crimes, he is going to prison for those
8 crimes. Remember what Paulsen said when he testified. Let's
9 look at page 1441, line 23 of the transcript.

10 "Q. When you opened Regal Remedies, did you intend to divert
11 controlled substances?

12 "A. No, I did not."

13 Let's go to 1442.

14 "Q. Did you divert controlled substances there?

15 "A. Yes, I did."

16 So Paulsen didn't intend to divert them either, but he
17 did. Is Mr. Gottlieb saying that Paulsen's not guilty of his
18 crimes? Of course not. That's because you know focusing on
19 want or intent, the way framed by Mr. Gottlieb, just doesn't
20 make sense. Under Mr. Gottlieb's theory, Paulsen must be
21 innocent. But your common sense tells you if having a business
22 justification for a reason were enough, it would be easy to get
23 away with lots of crimes.

24 So let me give you an example, and we can take this
25 down. Imagine someone works as a partner at a large marketing

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1 company. Company's trying to get a new client, but there is
2 another company that also wants to get the new client, and they
3 both have pitch meetings on the exact same day, one after the
4 other. The company really wants the business. So the partner
5 decides to kidnap the other company's associate who is making
6 the presentation, just for a few hours so he can't do the pitch
7 meeting. Now, they give him food, they give him water, he can
8 watch some TV, but ladies and gentlemen, he is kidnapped, he
9 can't leave. The reason the partner did this is to get the new
10 client. It is a business reason. But, does that make it
11 right? Would anyone say the partner didn't kidnap that
12 associate? Of course not. Of course not. The partner acted
13 with the unlawful purpose and the specific intent of furthering
14 it objective. The business justification, no matter how nice
15 it sounds, is no excuse.

16 So let's go back to the transcript. The testimony
17 that's in the record. Let's pull up page 476, lines 10 to 15.
18 Mr. Gottlieb showed you this. It is during Ms. Pompeo's
19 cross-examination.

20 "Q. While you were at RDC, did you intend to divert controlled
21 substances?

22 "A. No."

23 But that's the wrong question. Let's look at the
24 redirect. Page 612:20. Thank you.

25 "Q. Did RDC ship orders of controlled substances to pharmacies

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Rebuttal - Ms. Rothman

1 you believed were diverting during that period?

2 "A. Yes.

3 "Q. Did you know it was wrong?

4 "A. Yes.

5 "Q. Why did you do it?

6 "A. Cause that's what -- I was following directions.

7 "Q. Whose directions?

8 "A. Ultimately Larry Doud's."

9 Knowledge, check. Deliberate action, check. And at
10 whose direction did she commit these crimes? The defendant.
11 The defendant's guilty on Count One.

12 Let's look at Pietruszewski. The exact same thing
13 happened. Let's start with page 995 of the transcript. This
14 is actually interesting. Focusing on line 3.

15 "Q. Is it fair to say that while you were working at RDC,
16 during the entire time that you told this jury about, can we
17 agree that you certainly didn't want to commit any crimes,
18 right?"

19 Look at what Pietruszewski says.

20 "A. I did not want to commit any crimes, but I did."

21 Let's pause there for a moment. So much for
22 cross-examination, bringing out the truth of witnesses. You
23 heard Mr. Gottlieb say yesterday that Pietruszewski and others
24 were just rehearsed lines. Well this line, "I did not want to,
25 but I did" is devastating for the defendant on

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Rebuttal - Ms. Rothman

1 cross-examination.

2 Let's keep going. Page 996, line 1-5.

3 "Q. You didn't fail to file suspicious reports because you
4 wanted or intended to have narcotics diverted by pharmacies,
5 correct?

6 "A. I didn't want them to be, but they were diverted because
7 we let them go, yes."

8 Again, cross-examination. Devastating for the
9 defendant.

10 Let's look at what happens on redirect. Let's go to
11 page 1205 of the transcript, line 11.

12 "Q. When you worked at RDC, did you ship orders of controlled
13 substances to pharmacies that you believed were diverting
14 controlled substances?

15 "A. Yes.

16 "Q. Did you know it was wrong?

17 "A. Yes.

18 "Q. Why did you do it?

19 "A. That's what Larry wanted us to do."

20 Knowledge, check. Deliberate action, check. And at
21 whose direction? The defendant. You can take that down.

22 Let me say one more thing on intent. I'm not going to
23 go back over all your e-mails you saw during Mr. Roos' closing
24 argument that showed the defendant's intent. E-mails like
25 cardinal is in deep doo-doo, we need to stay low profile.

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Rebuttal - Ms. Rothman

1 E-mails like the suspicious ordering system is a concern to me.
2 E-mails like I have no idea if this is a good guy or a bad guy,
3 but I do know that in this case it is taking too long.

4 Those are clear e-mails in the defendant's own words
5 in black and white of his intent. The defendant's guilty on
6 Count One.

7 Let's talk for a quick moment about Count Two. That's
8 defrauding the DEA. If I understood Mr. Gottlieb's argument,
9 it's this. The defendant never instructed his employees to lie
10 to the DEA. He never told them to give the DEA RDC's written
11 policy. This document, Government Exhibit 276, let's pull it
12 up, please, Ms. Hauck. Thank you.

13 Really? What else do you have a policy like this for,
14 if not to give to the DEA? To put it on the wall? To give it
15 at Christmas parties? The whole point of this is you know the
16 DEA is going to ask for the policy, and so you give it to them.
17 And Pietruszewski told you it was important that they gave them
18 the right policy. The defendant didn't care. He knew.

19 But, let's be clear. You don't even need this
20 policy -- we can take it down -- RDC had been telling the DEA
21 for years they were going to investigate suspicious orders and
22 report them to the DEA. And there is no dispute they didn't do
23 that. And why didn't they do at that? Because the defendant
24 told them not to. That's the lie. He's guilty on Count Two.

25 So now I want to talk about Pietruszewski.

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Rebuttal - Ms. Rothman

1 Mr. Gottlieb got up yesterday and called him a liar. And he
2 has to say that, because if you believe Pietruszewski, the
3 defendant is guilty. It's that simple. Go back to the jury
4 room, check guilty on Count One and Count Two. It's
5 devastating testimony for the defendant.

6 So of course, Mr. Gottlieb is going to stand up here
7 and tell you that he's lying. But think about what
8 Mr. Gottlieb is really saying when he calls Pietruszewski a
9 liar. He's saying that Pietruszewski is framing the defendant
10 to help himself. That he's some criminal mastermind, that he
11 thought this whole thing up, and fabricated an entire scheme to
12 frame the defendant.

13 But then how do you explain all those e-mails in the
14 record from 2012, 2013, 2014, 2015, 2016, that show
15 Pietruszewski reporting to Doud? That show Pietruszewski
16 checking with management to make decisions? Did he go back in
17 time and create those e-mails? Of course not. You know that
18 makes no sense.

19 Ladies and gentlemen, you watched him testify in that
20 witness box for days. You saw the way he answered questions.
21 Does he seem like a criminal mastermind? Someone who concocted
22 a massive frame-up of the defendant? Of course not. He
23 couldn't go to a DEA conference without the defendant's
24 approval, let alone start a criminal conspiracy. He's not
25 defrauding the DEA without the defendant's blessing. Not

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Rebuttal - Ms. Rothman

1 shipping controls to pharmacies unless the defendant wants him
2 to. Everything Pietruszewski did at that company was at the
3 defendant's direction. The e-mails you saw in Mr. Roos'
4 closing make that point clear.

5 And remember this. The defendant is the one that put
6 Pietruszewski in the job. No training, no education, no
7 experience, and he's running the compliance department. Ask
8 yourself why that is. Why would he do that? Because
9 Pietruszewski could be pushed around. He would do whatever the
10 defendant wanted, and that's what happened.

11 And to be clear, it's not just Pietruszewski. If
12 there is a frame-up, everybody was involved in it too. Pompeo,
13 Sam Alaimo, even Chris Masseth, who testified that he spoke at
14 the defendant's retirement party.

15 Just think this through. Pompeo told you that the
16 decisions came from management, from the defendant. But, if
17 she's just making this story up now, what about that 2016 voice
18 mail. You remember that message she left for Pietruszewski?
19 How afraid she was that the defendant would think she wasn't
20 following his rules? Makes no sense.

21 And Alaimo, he has to be in on it too, but he has
22 nothing to gain. He was on and off the witness stand before
23 you even learned his name, ladies and gentlemen. What did he
24 tell you? On one occasion, Pompeo comes into his office,
25 crying. He couldn't remember the date, couldn't even remember

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1 the year. If this is a frame-up, a whole big conspiracy to get
2 the defendant, think he would have thought of some date, made
3 the story a little more detailed? He just told you what he
4 remembered. Nothing more, nothing less.

5 And Masseeth, he has to be part of it too, this massive
6 conspiracy. Remember, he told you that not everyone at RDC
7 liked Linden Care. He told you the defendant lied in that
8 e-mail about not knowing about Insys and the amount of Subsys
9 they were selling. He was surprised. He's also here to frame
10 the defendant? Like I said, you watched him testify. He
11 didn't want to be here. He didn't want to be testifying
12 against his former boss, his mentor. But he did, and he told
13 the truth. So the idea of a frame-up simply makes no sense.

14 So, if there's no massive conspiracy by all these RDC
15 employees, then what is Mr. Gottlieb saying when he tells you
16 Pietruszewski lied? He's saying that he did so at the
17 government's direction. When he says that, what he's really
18 saying is that these prosecutors, the government, heard a
19 story, didn't like it, and got a witness to change his story --

20 MR. GOTTLIEB: Your Honor, objection.

21 MS. ROTHMAN: -- that they suborned perjury.

22 THE COURT: I'm going to sustain the objection. For
23 both of you, I think you crossed the line. This is not about
24 the lawyers. You are to decide this case solely on the
25 evidence or lack of evidence in this case.

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Rebuttal - Ms. Rothman

1 Ms. Rothman.

2 MS. ROTHMAN: Judge Daniels is right. It's not about
3 the lawyers. Not about the government. Not about the people
4 at this table. It's about one person in this courtroom and his
5 actions. It's about the defendant, what he did. That's the
6 question for you to decide.

7 Let me say one more thing about Pietruszewski. You
8 heard about his agreement, the way it works. If he lies on
9 that witness stand, the agreement gets ripped up. No
10 sentencing letter from the government, and he goes to jail.
11 His incentives are to tell the truth. And you know his
12 testimony was consistent with all the other evidence in this
13 case. The e-mails, the documents, the compensation the
14 defendant got, it all lines up.

15 Now, I want to pause for a moment and talk about what
16 the defense strategy has been during this trial and in closing
17 arguments.

18 The strategy is this. To zoom in on one moment in
19 time, an e-mail, a document, and say, look, the defendant cared
20 about compliance. He agreed to shut off one pharmacy. He
21 said, gee, thanks, Richie, I agree, too. That's A28, a
22 document you were shown yesterday by the defense. Or here, an
23 e-mail about Linden Care, A39, what the defense also showed
24 you. And they've argued from that one moment in time that the
25 defendant didn't agree to break the law. But it doesn't work

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1 that way.

2 Let me give you an example. Imagine you're looking at
3 a big mosaic, put together from hundreds of thousands of little
4 tiles. You step right up to that mosaic, really, really up
5 close, and you look at one little tile. You're not going to
6 see the full picture. Maybe it's shiny, maybe it sparkles,
7 maybe it glitters. But that's not the big picture. You got to
8 step back, look at the full picture. When you do that, that's
9 when the pieces come together, that's when you see what really
10 happened at the company under the defendant's watch.

11 You step back and you see the defendant didn't care
12 about compliance. He cared about sales. He cared about making
13 money. And he decided to ship dangerous and addictive pills to
14 pharmacy customers to make money.

15 You want to see the full picture on Linden Care? Ask
16 to see Government Exhibit 908. You remember that chart. It
17 skyrockets in the middle with all those sales. What's the
18 story on Linden Care? A little bit of looking in 2013, 2014,
19 and then nothing. The company knows about bad doctors, the
20 company knows about cash, the defendant knows about those
21 problems. And they keep shipping pills, keep shipping deadly
22 fentanyl.

23 Now, Mr. Gottlieb has tried his best, he is putting
24 the government's proof to a test and the defendant has had a
25 fair trial. But he's not a magician. He can't make the

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1 evidence disappear. Think about what he has no response to.
2 He has no response to the fact that RDC's sales of opiates
3 skyrocketed when the rest of the industry went down. Let's
4 look at Government Exhibit 903, page seven. You heard nothing
5 about this yesterday. No explanation. No explanation why all
6 these bad pharmacies are flocking to RDC, flocking to RDC when
7 sales across the industry are going down. Think about that.

8 What else is there no explanation to? Let's pull up
9 Government Exhibit 59. Can we zoom in, please. Thank you,
10 Ms. Hauck.

11 You know this e-mail. We've talked about it before.
12 The DEA has fewer tools in its tool belt, so we're going to
13 start turning on accounts without doing due diligence and
14 shipping controls. He didn't say the obligations were
15 different. Doud didn't say the rules had changed. He said
16 nothing except it's less likely I'm going to get caught so I
17 want to do this. No response. Mr. Gottlieb has nothing to say
18 in response to this e-mail.

19 You want to see inside Mr. Doud's head? This e-mail,
20 among others, is clear proof of what he's thinking. Clear
21 proof that he is guilty on both charges against him.

22 We can take that down.

23 I want to be clear about this. You were told a lot
24 about businessman, business ideas and business decisions
25 yesterday. Mr. Doud is not on trial for being a successful

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1 businessman. He's not on trial for business decisions. He's
2 on trial because he supplied drug dealers like Michael Paulsen
3 and others with drugs and he lied to the DEA.

4 Selling opioids isn't like selling Tylenol or toilet
5 paper. If he was selling that stuff and wanted to keep
6 shipping to customers, so have it. The difference here is he's
7 selling deadly painkillers. He has responsibilities, and he
8 ignored them.

9 One more point on this before I wrap up, ladies and
10 gentlemen. Remember what Pietruszewski told you about why Doud
11 said we don't report our customers? Transcript page 895, line
12 20-22.

13 "A. Other customers wouldn't trust RDC and that, you know,
14 that they wouldn't want to order from RDC, because we were
15 turning customers in."

16 Could this sound any more criminal? We are not going
17 to tell DEA about our bad customers, because our bad customers
18 don't want to be reported to the DEA. It's here in black and
19 white the defendant's intent. The defendant's direction as to
20 what was going to happen at the company. We can take that
21 down.

22 This is not a business decision. Keeping secrets from
23 the DEA, the law enforcement agency that is supposed to
24 regulate and enforce the federal drug laws, is not a business
25 decision. Here's the thing though. Eventually, even though

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1 the defendant lied, the pharmacies got raided. The doctors got
2 arrested. The gig was up. Everyone knew, and the defendant is
3 asking you to believe he had no idea. He had nothing to do
4 with it.

5 I'm about to sit down. But before I do, I want to say
6 three things. First, you heard from Mr. Gottlieb about
7 reasonable doubt. You also heard about Thomas Jefferson. Let
8 me just say this. Since Jefferson's days, that standard,
9 reasonable doubt, beyond a reasonable doubt, has applied in
10 every trial, every criminal trial. And every day, since Thomas
11 Jefferson's days, juries, just like you, have reached verdicts.

12 Second, Mr. Gottlieb said the defendant's fate is in
13 your hands. That's not right. That's not fair. Don't let him
14 put it on you. The defendant is here because of what he did.
15 It's not your responsibility. It's not your responsibility.
16 He's guilty because of what he did. It's the evidence that
17 makes him guilty. Not you.

18 And third, I want to take you back to where we started
19 two weeks ago. We asked you to do three things. To pay
20 attention to the evidence, and you've done that. To follow
21 Judge Daniels' instructions on the law, and I trust that you
22 will do that. And third, to use your common sense. If you use
23 those your common sense, you will see through all of the
24 distractions, all the noise, all the finger pointing, and focus
25 on what this case has always been about. About a CEO who put

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1 sales over safety. About a CEO who got rich while people got
2 addicted and harmed by dangerous pills. About a CEO who had
3 his people do his dirty work, and now he wants you to believe
4 he had nothing to do with it.

5 Ladies and gentlemen, now is the time to hold the
6 defendant accountable for his actions. Now is the time to find
7 the defendant, Larry Doud, guilty.

8 Thank you.

9 THE COURT: Ladies and gentlemen, you are about to
10 enter your final duty, which is to decide the fact issues in
11 the case.

12 Before you do that, I will instruct you on the law.
13 You must pay close attention to me now. I will go as slowly as
14 I can and be as clear as possible.

15 I told you at the very start of the trial that your
16 principal function during the taking of the testimony would be
17 to listen carefully and observe each witness who testified. It
18 has been obvious to me and to counsel that you have faithfully
19 discharged this duty. It is evident that you followed the
20 testimony with close attention.

21 I ask you to give me that same careful attention as I
22 instruct you on the law.

23 You have now heard all of the evidence in the case as
24 well as the final arguments of the lawyers for the parties. My
25 duty at this point is to instruct you as to the law. It is

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1 your duty to accept these instructions of law and apply them to
2 the facts as you determine them, just as it has been my duty to
3 preside over the trial, and decide what testimony and evidence
4 is relevant under the law for your consideration.

5 On these legal matters, you must take the law as I
6 give it to you. If any attorney has stated a legal principle
7 different from any that I state to you in my instructions, it
8 is my instructions that you must follow.

9 You should not single out any instruction as alone
10 stating the law, but you should consider my instructions as a
11 whole when you retire to deliberate in the jury room.

12 You should not, any of you, be concerned about the
13 wisdom of any rule that I state, regardless of any opinion that
14 you may have as to what the law may be or ought to be. It
15 would violate your sworn duty as jurors to base a verdict upon
16 any other view of the law than that which I give to you.

17 Your final role is to pass upon and decide the fact
18 issues that are in the case. You, the members of the jury, are
19 the sole and exclusive judges of the facts. You pass upon the
20 weight of the evidence, you determine the credibility of the
21 witnesses, you resolve such conflicts as there may be in the
22 testimony, and you draw whatever reasonable inferences you
23 decide to draw from the facts as you have determined them.

24 I shall later discuss with you how to pass upon the
25 credibility or believability of the witnesses.

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1 In determining the facts, you must rely upon your own
2 recollection of the evidence. What the lawyers have said in
3 their opening statements, in their closing arguments, in their
4 objections or in their questions is not evidence. In this
5 connection, you should bear in mind that a question put to a
6 witness is never evidence. It is the answer which is the
7 evidence. But you may not consider any answer that I directed
8 you to disregard or that I directed struck from the record. Do
9 not consider such answers. Nor is anything I may have said
10 during did the trial or may say during these instructions to be
11 taken in substitution for your own independent recollection.
12 What I say is not evidence.

13 The evidence before you consists of the answers given
14 by witnesses, the sworn testimony they gave as you recall it,
15 and the exhibits that were received in evidence, and the
16 stipulations of the parties. A stipulation is an agreement
17 among the parties that a certain fact is true, or that if a
18 certain witness were called, he or she would give certain
19 testimony. You should regard any agreed facts as true.

20 Since you are the sole and exclusive judges of the
21 facts, I do not mean to indicate any opinion as to the facts or
22 what your verdict should be. The rulings I have made during
23 the trial are not any indication of my views of what your
24 decision should be as to whether or not the guilt of the
25 defendant has been proven beyond a reasonable doubt.

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1 As to the facts, ladies and gentlemen, as I said, you
2 are the exclusive judges. You are to perform the duty of
3 finding the facts without bias or prejudice as to any party.

4 Exhibits which have been marked for identification but
5 not received in evidence may not be considered by you as
6 evidence. Only those exhibits received may be considered as
7 evidence.

8 Similarly, you are to disregard any testimony when I
9 have ordered it to be stricken. As I indicated before, only
10 the witness's answers are evidence, and you are not to consider
11 a question as evidence. Similarly, statements by counsel are
12 not evidence.

13 You should consider the evidence in light of your own
14 common sense and experience, and you may draw reasonable
15 inferences from the evidence.

16 Anything you may have seen or heard about this case
17 outside the courtroom is not evidence, and must be entirely
18 disregarded.

19 Let me again emphasize that a lawyer's question is not
20 evidence. At times, a lawyer may have incorporated into a
21 question a statement which assumed certain facts to be true,
22 and asked the witnesses if the statement was true. If the
23 witness denies the truth of a statement, and if there is no
24 evidence in the record proving that the assumed fact is true,
25 then you may not consider the fact to be true simply because it

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1 was contained in the lawyer's question.

2 For example, if a witness was asked the question, "Is
3 your automobile red?" You would not be permitted to consider
4 as true the assumed fact that the witness owns an automobile,
5 unless the witness indicates that he or she does, or unless
6 there is some other evidence in the record that the witness
7 owns an automobile. In short, again, questions are not
8 evidence. Answers are.

9 In determining the facts, the jury is reminded that
10 before each member was accepted and sworn to act as a juror, he
11 or she was asked questions concerning competency,
12 qualifications, and fairness and freedom from prejudice and
13 bias. On the faith of those answers, the juror was accepted by
14 the parties. Therefore, those answers are as binding on each
15 of the jurors now as they were then, and should remain so until
16 the jury is discharged from consideration of this case.

17 You are to perform the duty of finding the facts
18 without bias or prejudice as to any party. You are to perform
19 your final duty in an attitude of complete fairness and
20 impartiality.

21 The case is important to the government, for the
22 enforcement of criminal laws is a matter of prime concern to
23 the community. Equally, it is important to the defendant, who
24 is charged with a serious crime.

25 The fact that the prosecution is brought in the name

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1 of the United States of America entitles the government to no
2 greater consideration than that accorded to any other party to
3 a litigation. By the same token, it is entitled to no less
4 consideration. In this regard, all parties, whether government
5 or individuals, stand as equals at the bar of justice.

6 Under your oath as jurors, you are not to be swayed by
7 sympathy. You are to be guided solely by the evidence in this
8 case. The crucial hard-core question that you must ask
9 yourselves as you sift through the evidence is: Has the
10 government proven the guilt of the defendant beyond a
11 reasonable doubt? It is for you alone to decide whether the
12 government has proven that the defendant is guilty of the
13 crimes charged solely on the basis of the evidence and subject
14 to the law as I charge you. It must be clear to you that once
15 you let fear or prejudice or bias or sympathy interfere with
16 your thinking, there is a risk that you will not arrive at a
17 true and just verdict.

18 If you have a reasonable doubt as to the defendant's
19 guilt, you should not hesitate for any reason to find a verdict
20 of not guilty. But, on the other hand, if you should find that
21 the government has met its burden of proving the defendant's
22 guilt beyond a reasonable doubt, you should not hesitate
23 because of sympathy or any other reason to render a verdict of
24 guilty.

25 It is the duty of the attorney for each side of a case

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1 to object when the other side offers testimony or other
2 evidence which the attorney believes is not properly
3 admissible. Counsel also have the right and duty to ask the
4 Court to make rulings of law and to request conferences at the
5 sidebar out of the hearing of the jury. All those questions of
6 law must be decided by me, the Court. You should not show any
7 prejudice against an attorney or his client because the
8 attorney objected to the admissibility of evidence or asked for
9 a conference out of the hearing of the jury or asked the Court
10 for a ruling on the law.

11 As I've already indicated, my rulings on the
12 admissibility of evidence do not indicate any opinion about the
13 weight or effect of the evidence. You are the sole judges of
14 the credibility of all witnesses and the weight and effect of
15 all evidence.

16 There are two types of evidence which you may properly
17 use in deciding whether a defendant is guilty or not guilty.

18 One type of evidence is called direct evidence.
19 Direct evidence is where a witness testifies to what he or she
20 saw, heard or observed. In other words, when a witness
21 testified about what is known to him or her of his or her own
22 knowledge by virtue of his or own senses. What he sees, hears,
23 touches, tastes or smells, that is called direct evidence.

24 Circumstantial evidence is evidence which tends to
25 prove a disputed fact by proof of other facts. There is a

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1 simple example of circumstantial evidence which is often used
2 in this courthouse.

3 Assume that when you came into the courthouse this
4 morning, the sun was shining and it was a nice day. Assume the
5 courtroom blinds were drawn and you could not look outside. As
6 you were sitting here, someone walked in with an umbrella which
7 was dripping wet, and somebody else then walked in with a
8 raincoat which was also dripping wet. Now, you cannot look
9 outside of the courtroom and you cannot see whether or not it
10 is raining, so you have no direct evidence of that fact. But
11 on the combination of facts which I have asked you to assume,
12 it would be reasonable and logical for you to conclude that it
13 had been raining.

14 That is all there is to circumstantial evidence. You
15 infer on the basis of reason and experience and common sense
16 from an established fact the existence or non-existence of some
17 other fact.

18 Circumstantial evidence is of no less value than
19 direct evidence, for it is a general rule that the law makes no
20 distinction between direct and circumstantial evidence, but
21 simply requires that before convicting a defendant, the jury
22 must be satisfied of the defendant's guilt beyond a reasonable
23 doubt from all of the evidence in the case.

24 During the trial you may have heard the attorneys or
25 the Court use the term "inference," and in their arguments they

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1 have asked you to infer on the basis of your reason, experience
2 and common sense from one or more established facts the
3 existence of some other facts.

4 An inference is not a suspicion or a guess. It is a
5 reasoned, logical decision to conclude that a disputed fact
6 exists on the basis of another fact which you know exists.

7 There are times when different inferences may be drawn
8 from facts, whether proved by direct or circumstantial
9 evidence. The government asks you to draw one set of
10 inferences, while the defense asks you to draw another. It is
11 for you, and you alone, to decide what inferences you will
12 draw.

13 The process of drawing inferences from facts in
14 evidence is not a matter of guesswork or speculation. An
15 inference is a deduction or conclusion which you, the jury, are
16 permitted to draw, but not required to draw, from the facts
17 which have been established by either direct or circumstantial
18 evidence. In drawing inferences, you should exercise your
19 common sense.

20 So while you are considering the evidence presented to
21 you, you are permitted to draw, from the facts which you find
22 to be proven, such reasonable inferences as would be justified
23 in light of your experience.

24 Here, again, let me remind you that, whether based
25 upon direct or circumstantial evidence, or upon the logical

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1 reasonable inferences drawn from such evidence, you must be
2 satisfied of the guilt of the defendant beyond a reasonable
3 doubt before you may convict.

4 Now, you had an opportunity to observe all of the
5 witnesses. It is now your job to decide how believable each
6 witness was in his or her testimony. You are the sole judges
7 of the credibility of each witness and of the importance of his
8 or her testimony.

9 You will now have to decide where the truth lies. And
10 an important part of that decision will involve making
11 judgments about the testimony of the witnesses you have
12 listened to and observed. In making those judgments, you
13 should carefully scrutinize all of the testimony of each
14 witness, the circumstances under which each witness testified,
15 and any other matter in evidence which may help you to decide
16 the truth and the importance of each witness's testimony.

17 Your decision whether or not to believe a witness may
18 depend on how that witness impressed you. Was the witness
19 candid, frank and forthright? Or did the witness seem as if he
20 or she was hiding something, being evasive or suspect in some
21 way? How did the way the witness testified on direct
22 examination compare with the way the witness testified on
23 cross-examination? Was the witness consistent in his or her
24 testimony or did he or she contradict himself or herself? Did
25 the witness appear to know what he or she was talking about and

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1 did the witness strike you as someone who was trying to report
2 his or her knowledge accurately?

3 How much you choose to believe a witness may be
4 influenced by the witness's bias. Does the witness have a
5 relationship with the government or the defendant which may
6 affect how he or she testified? Does the witness have some
7 incentive, loyalty, or motive that might cause him or her to
8 shade the truth, or does the witness have some bias, prejudice
9 or hostility that may have caused the witness, consciously or
10 not, to give you something other than a completely accurate
11 account of the facts he testified to?

12 Even if the witness was impartial, you should consider
13 whether the witness had an opportunity to observe the facts he
14 or she testified about, and you should also consider the
15 witness's ability to express himself or herself. Ask
16 yourselves whether the witness's recollection of the facts
17 stand up in light of all of the other evidence.

18 In other words, what you must try to do in deciding
19 credibility is to size a person up in light of his or her
20 demeanor, the explanations given, and in light of all the other
21 evidence in the case, just as you would in any important matter
22 where you are trying to decide if a person is truthful,
23 straightforward, and accurate in his or her recollection. In
24 deciding the question of credibility, remember that you should
25 use your common sense, your good judgment, and your experience.

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1 You may have heard evidence that witnesses made
2 previous statements that are inconsistent with the witness's
3 trial testimony. These statements were admitted for the
4 purpose of helping you to decide whether to believe the trial
5 testimony of the witness who contradicted himself or herself.
6 If you find that a witness made an earlier statement that
7 conflicts with his or her trial testimony, you may consider
8 that fact in deciding how much of his or her trial testimony,
9 if any, to believe. In making this determination, you may
10 consider whether the witness purposefully made a false
11 statement or whether it was an innocent mistake; whether the
12 inconsistency concerned an important fact or had to do with a
13 small detail; whether the witness had an explanation for the
14 inconsistency and whether the explanation appealed to your
15 common sense. It is exclusively your judgment to determine
16 whether the prior statement was inconsistent, and if so, how
17 much weight, if any, is the inconsistent statement to be given,
18 in determining whether to believe whole or part of a witness's
19 testimony.

20 The defendant has called a witness who has given her
21 opinion of the defendant's good character. This testimony is
22 not to be taken by you as the witness's opinion as to whether
23 the defendant is guilty or not guilty. That question is for
24 you alone to determine. You should, however, consider this
25 character evidence, together with all the other facts and all

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1 the other evidence in the case, in determining whether the
2 defendant is guilty or not guilty of the charges.

3 Accordingly, if, after considering all of the
4 evidence, including testimony about the defendant's good
5 character, you have a reasonable doubt as to guilt, you must
6 acquit him of those charges.

7 On the other hand, if, after considering all of the
8 evidence, including that of defendant's character, you are
9 satisfied beyond a reasonable doubt that the defendant is
10 guilty, you should not acquit the defendant merely because you
11 believe him to be a good character.

12 In evaluating credibility of the witnesses, you should
13 take into account any evidence that the witness who testified
14 may benefit in some way from the outcome of this case. Such an
15 interest in the outcome creates a motive to testify falsely,
16 and may sway the witness to testify in a way that advances his
17 or her own interests. Therefore, if you find that any witness
18 whose testimony you are considering may have an interest in the
19 outcome of this trial, then you should bear that factor in mind
20 when evaluating the credibility of his or her testimony and
21 accept it with great care.

22 This is not to suggest that every witness who has an
23 interest in the outcome of a case will testify falsely. It is
24 for you to decide to what extent, if at all, the witness's
25 interest has affected or colored his or her testimony.

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1 You have heard the testimony of witnesses employed by
2 law enforcement agencies. The fact that a witness may be
3 employed by a law enforcement agency does not mean that his or
4 her testimony is necessarily deserving of more or less
5 consideration or greater or lesser weight than that of an
6 ordinary witness.

7 At the same time, it is quite legitimate for defense
8 counsel to attack the credibility of a law enforcement witness
9 on grounds that his or her testimony may be colored by a
10 personal or professional interest in the outcome of the case.

11 It is your decision, after reviewing all the evidence,
12 whether to accept the testimony of the law enforcement witness
13 and to give to that testimony whatever weight, if any, you find
14 it deserves.

15 You heard testimony from cooperating witnesses who
16 either pled guilty to criminal charges or who the government
17 agreed not to prosecute.

18 The law allows the use of cooperating witness
19 testimony, and such testimony is properly considered by the
20 jury. The testimony of a cooperating witness may be enough in
21 itself to support a conviction if the jury finds that the
22 testimony established guilt beyond a reasonable doubt. It is
23 also the case that cooperating witnesses' testimony must be
24 scrutinized with great care and viewed with special caution. A
25 cooperating witness may face fairly long sentences, and may be

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hoping for a reduced sentence or to avoid prosecution.

The decision of who will be prosecuted is a decision solely within the discretion of the United States attorney's office. For a defendant who pleads guilty, the U.S. attorney's office decides whether to submit a letter to the sentencing judge, and the sentencing court, according to its own determination, decides what sentence to ultimately impose. A cooperating witness's testimony should be given such weight as it deserves in light of all the facts and circumstances as you would the testimony of any other witness.

Because of the possible interest a cooperating witness may have in testifying, let me say a few things that you may want to consider during your deliberations on the subject of cooperating witnesses.

The fact that a witness is testifying pursuant to a cooperation or non-prosecution agreement should be consider by you as bearing on his or her credibility. It does not follow, however, that simply because a person has admitted participating in one or more crimes, he or she is incapable of giving a truthful version of what happened. However, you should bear in mind that a witness who has entered into such an agreement has an interest in this case different than any ordinary witness. A witness who realizes that he or she may be able to obtain their own freedom or receive a lighter sentence by giving testimony favorable to the U.S. attorney has a motive

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1 to testify falsely. Therefore, you must examine that testimony
2 with caution and weigh it with great care. If, after
3 scrutinizing the testimony, you decide to accept it, you may
4 give it whatever weight, if any, you find it deserves.

5 Like the testimony of any other witness, the testimony
6 of a government cooperating witness should be given such weight
7 as it deserves in light of the facts and circumstances before
8 you, taking into account the witness's demeanor and candor, the
9 strength and accuracy of his or her recollection, his or her
10 background, and the extent to which his or her testimony is or
11 is not corroborated by other evidence in the case. You should,
12 of course, consider whether the testimony was motivated by
13 reward or self-interest. You should ask yourself whether the
14 cooperating witnesses would benefit more by lying or by telling
15 the truth. If you believe the witness was motivated by
16 personal gain, consider if the motivation was one that would
17 cause him or her to lie or was it one that would cause him or
18 her to tell the truth and if this motivation colored the
19 testimony.

20 Obviously, you should reject the testimony if you find
21 it was false. If you are satisfied that the testimony is true,
22 you should accept it. You may also accept parts and reject
23 parts of the cooperating witness's or of any witness's
24 testimony.

25 One final note in this regard. It is of no concern of

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1 yours why the U.S. attorney made an agreement with this
2 witness. The government is permitted to make these kinds of
3 agreements. Your sole concern is to decide whether the witness
4 has given truthful testimony in this case before you.

5 In sum, you should look to all of the evidence in
6 deciding what credence and what weight, if any, you will give
7 to a witness's testimony.

8 Now, in this case I have permitted certain witnesses
9 to testify as expert witnesses and to express their opinions
10 about matters that are in issue. An expert witness may be
11 permitted to testify to an opinion on those matters about which
12 he or she has special knowledge, skill, experience and
13 training. Such testimony is presented to you on the theory
14 that someone who is experienced and knowledgeable in the field
15 can assist you in understanding the evidence or in reaching an
16 independent decision on the facts.

17 In weighing this opinion testimony, you may consider
18 the witness's qualifications, his or her opinions, the reasons
19 for testifying, as well as all the other considerations that
20 ordinarily apply when you are deciding whether or not to
21 believe a witness's testimony. You may give the expert
22 testimony whatever weight, if any, you find it deserves in
23 light of all the evidence in this case. You should not,
24 however, accept the testimony of an expert witness merely
25 because I allowed the witness to testify as an expert. Nor

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1 should you substitute your own reason, judgment, and common
2 sense. The determination of the facts in this case rests
3 solely with you.

4 There are several people whose names you heard during
5 the trial but who did not appear here to testify. I instruct
6 you that both sides had an equal opportunity or lack of
7 opportunity to call any of these witnesses. Therefore, you
8 should not draw any inference or reach any conclusions as to
9 what they would have testified to had they been called.

10 You should, however, remember my instructions that the
11 law does not impose on a defendant in a criminal case the
12 burden or duty of calling any witnesses or producing any
13 evidence. The burden remains with the government to prove the
14 guilt of a defendant beyond a reasonable doubt.

15 The defendant did not testify in this case. Under our
16 Constitution, he has no obligation to testify or to present any
17 other evidence, because it is the prosecution's burden to prove
18 the defendant's guilt beyond a reasonable doubt. That burden
19 remains with the prosecution throughout the entire trial and
20 never shifts to the defendant. The defendant is never required
21 to prove that he is innocent.

22 You may not attach any significance to the fact that
23 the defendant did not testify. No adverse inference against
24 him may be drawn by you because he did not take the witness
25 stand. You may not consider this against the defendant in any

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1 way in your deliberations in the jury room.

2 During the trial, you may have heard testimony of
3 witnesses or argument by counsel that the government did not
4 utilize specific investigative techniques. You may consider
5 these facts in deciding whether the government has met its
6 burden of proof, because you should look to all of the evidence
7 or lack of evidence in deciding whether the defendant has been
8 proven guilty. However, you are also instructed that there is
9 no legal requirement that the government use any specific
10 investigative techniques to prove its case.

11 Your concern, as I have said, is to determine whether
12 or not, on the evidence, the defendant's guilt has been proven
13 beyond a reasonable doubt.

14 You have heard evidence during the trial that
15 witnesses have discussed the facts of the case and their
16 testimony with the lawyers before the witnesses appeared in
17 court.

18 Although you may consider that fact when you are
19 evaluating a witness's credibility, I should tell you that
20 there is nothing either unusual or improper about a witness
21 meeting with lawyers before testifying so that the witness can
22 be aware of the subjects he or she will be questioned about,
23 focus on those subjects, and have the opportunity to review
24 relevant exhibits before being questioned about them in court.
25 Such consultation helps conserve your time and the Court's

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1 time. In fact, it would be unusual for a lawyer to call a
2 witness without such consultation.

3 Again, the weight you give to the fact or nature of
4 the witness's preparation for his or her testimony, and what
5 inferences you draw from such preparation, are matters
6 completely within your discretion.

7 Some of the exhibits that were admitted in evidence
8 were in the form of charts or summaries. I decided to admit
9 these charts and summaries in place of or in addition to the
10 underlying documents that they represent in order to save time
11 and avoid unnecessary inconvenience. You should consider these
12 charts and summaries as you would any other evidence admitted.

13 Now, the question of possible punishment of the
14 defendant is of no concern to the jury and should not, in any
15 sense, enter into or influence your deliberations. The duty of
16 imposing sentence rests exclusively upon the Court. Your
17 function is to weigh the evidence in the case and to determine
18 whether or not the defendant is guilty beyond a reasonable
19 doubt, solely upon the basis of such evidence. Under your oath
20 as jurors, you cannot allow a consideration of the punishment
21 which may be imposed upon the defendant, if he is convicted, to
22 influence your verdict, in any way, or in any sense enter into
23 your deliberations.

24 Although the defendant has been indicted, you must
25 remember that an indictment is only an accusation. It is not

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1 evidence. The defendant has pled not guilty to that
2 indictment.

3 As a result of the defendant's plea of not guilty, the
4 burden is on the prosecution to prove guilt beyond a reasonable
5 doubt. This burden never shifts to the defendant for the
6 simple reason that the law never imposes upon a defendant in a
7 criminal case the burden or duty of calling any witnesses or
8 producing any evidence.

9 The law presumes the defendant to be innocent of all
10 of the charges against him. I therefore instruct you that the
11 defendant is to be presumed by you to be innocent throughout
12 your deliberations until such time, if ever, you as a jury are
13 satisfied that the government has proven him guilty beyond a
14 reasonable doubt.

15 The defendant begins the trial here with a clean
16 slate. This presumption of innocence alone is sufficient to
17 acquit a defendant unless you as jurors are unanimously
18 convinced beyond a reasonable doubt of his guilt after a
19 careful and impartial consideration of all of the evidence in
20 this case. If the government fails to sustain its burden, you
21 must find the defendant not guilty.

22 This presumption was with the defendant when the trial
23 began and remains with him even now as I speak to you and will
24 continue with the defendant into your deliberations, unless and
25 until you are convinced that the government has proven his

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1 guilt beyond a reasonable doubt.

2 I've said that the government must prove the defendant
3 guilty beyond a reasonable doubt. The question naturally is,
4 what is a reasonable doubt? The words almost define
5 themselves. It is a doubt based upon reason and common sense.
6 It is a duty that a reasonable person has after carefully
7 weighing all of the evidence. It is a doubt which would cause
8 a reasonable person to hesitate to act in a matter of
9 importance in his or her personal life. Proof beyond a
10 reasonable doubt must, therefore, be proof of such a convincing
11 character that a reasonable person would not hesitate to rely
12 and act upon it in the most important of his or her own
13 affairs. A reasonable doubt is not a caprice or a whim. It is
14 not a speculation or suspicion. It is not an excuse to avoid
15 the performance of an unpleasant duty, and it is not sympathy.

16 In a criminal case, the burden is at all times upon
17 the government to prove guilt beyond a reasonable doubt. The
18 law does not require that the government prove guilt beyond all
19 possible doubt. Proof beyond a reasonable doubt is sufficient
20 to convict. This burden never shifts to the defendant, which
21 means that it is always the government's burden to prove each
22 of the elements of the crimes charged beyond a reasonable
23 doubt.

24 If, after a fair and impartial consideration of all of
25 the evidence or lack of evidence, you have a reasonable doubt,

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1 it is your duty to acquit the defendant. On the other hand,
2 if, after fair and impartial consideration of all the evidence,
3 you are satisfied of the defendant's guilt beyond a reasonable
4 doubt, you should vote to convict.

5 With these preliminary instructions in mind, let us
6 turn to the charges against the defendant as contained in the
7 indictment. I remind you that an indictment itself is not
8 evidence. It merely describes the charge made against the
9 defendant. It is an accusation. It may not be considered by
10 you as any evidence of the guilt of the defendant.

11 In reaching your determination of whether the
12 government has proved the defendant guilty beyond a reasonable
13 doubt, you may consider only the evidence introduced or lack of
14 evidence.

15 The defendant is charged with knowingly and
16 intentionally participating in two separate conspiracies.

17 Count One of the indictment charges the defendant with
18 conspiracy to distribute opioid drugs, specifically oxycodone
19 and 400 grams of more of fentanyl to pharmacies that he knew
20 were unlawfully dispensing those drugs.

21 Count Two of the indictment charges the defendant with
22 conspiracy to defraud the DEA by agreeing to make
23 misrepresentations and not reporting suspicious purchase orders
24 to the DEA as required by law.

25 A conspiracy is a kind of criminal partnership -- a

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1 combination or agreement of two or more persons to join
2 together to accomplish some unlawful purpose.

3 The crime of conspiracy is separate and distinct from
4 the actual violation of any specific federal laws, which the
5 law refers to as substantive crimes.

6 Indeed, you may find a defendant guilty of the crime
7 of conspiracy even though the substantive crime, which was the
8 object of the conspiracy, was not actually committed. Congress
9 has deemed it appropriate to make conspiracy, standing alone, a
10 separate crime, even if the conspiracy is not successful.

11 You must consider each conspiracy separately. You may
12 find that the defendant participated in one conspiracy, both,
13 or neither, based on the evidence presented to you.

14 In order to prove the defendant guilty of
15 participating in a conspiracy, the government must prove both
16 of the following two elements beyond a reasonable doubt:

17 First, the existence of the conspiracy as charged in
18 it the indictment; in other words, that there was in, fact, an
19 agreement or understanding by two or more persons to violate
20 the law as alleged.

21 And second, that the defendant knowingly and
22 intentionally became a member of that particular conspiracy at
23 some point during the applicable period, and that he joined and
24 participated in the conspiracy, knowing of its illegal purpose.

25 The first element which the government must prove as

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1 I've indicated beyond a reasonable doubt to establish the
2 offense of conspiracy is that two or more persons entered the
3 unlawful agreement as charged in the indictment.

4 In order for the government to satisfy this element,
5 you need not find that the alleged members of the conspiracy
6 met together and entered into any express or formal agreement.
7 Similarly, you need not find that the alleged conspirators
8 stated in words or writing what the scheme was, its object or
9 purpose, or every precise detail of the scheme or the means by
10 which its object or purpose was to be accomplished.

11 What the government must prove is that there was a
12 mutual understanding, either spoken or unspoken, between two or
13 more people to cooperate with each other to accomplish an
14 unlawful act.

15 You may, of course, find that the existence of an
16 agreement to disobey or disregard the law has been established
17 by direct proof. However, since conspiracy, by its very
18 nature, is in many ways characterized by secrecy, you may also
19 infer its existence from the circumstances and the conduct of
20 the parties involved.

21 In a very real sense, then, in the context of
22 conspiracy cases, actions often speak louder than words. In
23 this regard, you may, in determining whether an agreement
24 existed, consider the actions and statements of all of those
25 you find to be participants as proof that a common design

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1 existed on the part of persons involved in a conspiracy to
2 accomplish an unlawful purpose.

3 In determining whether an agreement existed here,
4 consider the actions and statements of all of those whom you
5 find to be participants as proof that a common design existed
6 on the part of persons involved in a conspiracy to act together
7 to accomplish an unlawful purpose. It is sufficient to
8 establish the existence of a conspiracy, if, after considering
9 all of the evidence, you find beyond a reasonable doubt that at
10 least two alleged conspirators came to a mutual understanding,
11 either spoken or unspoken, to accomplish the unlawful objective
12 alleged.

13 Now, the second element which the government must
14 prove beyond a reasonable doubt to establish the offense of
15 conspiracy is that the defendant knowingly and intentionally
16 became a member of the conspiracy.

17 If you are satisfied that the conspiracy charged in
18 the indictment existed, you must next ask yourselves whether
19 the defendant was a member of that conspiracy. In deciding
20 whether the defendant was in fact a member of the conspiracy,
21 you should consider whether the defendant knowingly and
22 willfully joined the conspiracy. Did he participate in it with
23 knowledge of its unlawful purpose and with the specific
24 intention of furthering it objective?

25 "Unlawfully" means contrary to law. But in terms of

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1 its application to the defendant's state of mind, the
2 government is not required to show that the defendant knew that
3 he was breaking any particular law. The government must prove,
4 however, that the defendant was aware of the generally unlawful
5 nature of his acts.

6 "Knowingly" means to act consciously and voluntarily,
7 rather than by mistake or accident or mere inadvertence.

8 "Intentionally" means to act deliberately.

9 "Willfully" means to act purposefully and with an
10 intent to do something unlawful.

11 If you find beyond a reasonable doubt that the
12 defendant participated in the charged conspiracy and did so
13 knowingly, intentionally, and willfully, then the second
14 element is satisfied. In making that finding, you must be
15 satisfied beyond a reasonable doubt that in joining the
16 conspiracy (if you find that the defendant did join the
17 conspiracy), the defendant knew what he was doing -- that he
18 took the actions in question deliberately and purposefully.
19 The defendant's acts must have been the product of the
20 defendant's conscious objective, and not the product of a
21 mistake or accident or mere negligence or some other innocent
22 reason.

23 As I mentioned a moment ago, before the defendant can
24 be found to have been a conspirator, you must first find that
25 he knowingly joined in the unlawful agreement or plan. The key

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1 question, therefore, is whether the defendant joined the
2 conspiracy with an awareness of at least some of the basic aims
3 and purposes of the unlawful agreement.

4 It is important for you to note that the defendant's
5 participation in the conspiracy may be established by
6 independent evidence of his own acts or statements, as well as
7 those of any other individuals you find to be members of the
8 alleged conspiracy, and the reasonable inferences which may be
9 drawn from them.

10 The defendant's knowledge is a matter of inference
11 from the facts proved. In that connection, I instruct you that
12 to be a member of the conspiracy, the defendant need not have
13 known the identities of each and every other member, nor need
14 he have been apprised of all of their activities. Moreover,
15 the defendant need not have been fully informed as to all of
16 the details or the scope of the conspiracy in order to justify
17 an inference of knowledge on his part. Furthermore, the
18 defendant need not have joined all of the conspiracy's unlawful
19 objectives.

20 The extent of a defendant's participation has no
21 bearing on the issue of a defendant's guilt. A conspirator's
22 liability is not measured by the extent or duration of his
23 participation. Indeed, each member may perform separate and
24 distinct acts and may perform them at different times. Some
25 conspirators play major roles, while others play minor roles in

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1 the scheme. An equal role is not what the law requires. In
2 fact, even a single act may be sufficient to draw a defendant
3 within the ambit of a conspiracy.

4 I want to caution you, however, that mere association
5 with one or more members of the conspiracy does not
6 automatically make the defendant a member. A person may know
7 or be friendly with a conspirator without being a conspirator
8 himself. Mere similarity of conduct or the fact that they may
9 have assembled together and discussed common aims and interests
10 does not necessarily establish membership in the conspiracy.

11 I also want to caution you that mere knowledge or
12 acquiescence without participation in the unlawful plan is not
13 sufficient. Moreover, the fact that the acts of the defendant,
14 without knowledge, merely happen to further the purposes or
15 objectives of the conspiracy does not make the defendant a
16 member. More is required under the law. What is necessary is
17 that the defendant must have participated with knowledge of at
18 least some of the purposes or objectives of the conspiracy, and
19 with the intention of aiding in the accomplishment of those
20 unlawful ends.

21 Now, when considering each conspiracy charged in the
22 indictment, I instruct you that when people enter into a
23 conspiracy to accomplish an unlawful end, they become agents or
24 partners of one another in carrying out the conspiracy.

25 In determining the factual issues before you, you may

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1 consider against the defendant any acts or statements made in
2 furtherance of the alleged conspiracy by any of the people that
3 you find, under the standards I have described, to have been
4 his co-conspirators. Even if such acts or statements were not
5 made in his presence or were made without his knowledge.

6 Ultimately, the question is this: Has the government
7 proven beyond a reasonable doubt that the defendant knowingly
8 and intentionally joined the conspiracy charged and
9 participated in it with the awareness of its unlawful purpose
10 and as something he intended to bring about?

11 The unlawful agreement as charged in Count One, also
12 known as the object of the conspiracy, is to distribute a
13 controlled substance. Oxycodone and fentanyl are controlled
14 substances.

15 In order to prove this charge against the defendant,
16 the government must establish beyond a reasonable doubt that
17 the unlawful agreement to distribute fentanyl and/or oxycodone
18 was an object of the conspiracy in which the defendant
19 participated.

20 Remember, as I mentioned earlier, the ultimate success
21 of the conspiracy, or the actual commission of the crime that
22 is the object of the conspiracy, is not required. The offense
23 alleged in Count One is simply that the defendant participated
24 in the conspiracy knowing that the object of the conspiracy was
25 to distribute oxycodone and fentanyl.

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1 Now, the word "distribution" means the actual,
2 constructive or attempted transfer of the drug. To distribute
3 simply means to deliver, to pass on, to hand over something to
4 another person, or to cause it to be delivered, passed on, or
5 handed over to another. Distribution does not require a sale.

6 Now, as I have just noted, the object of the
7 conspiracy charged in Count One of the indictment is the
8 distribution of controlled substances. The law, or statute,
9 which makes it a crime to distribute a controlled substance
10 applies to companies that sell controlled substances, known as
11 distributors, and people who work with or for those companies.
12 Under the law, a company that distributes controlled substances
13 for medical use is required to register with the Drug
14 Enforcement Administration. A registered distributor is
15 required to, among other things, maintain effective controls
16 against diversion of controlled substances into other than
17 legitimate medical channels.

18 Under the law, a distributor that is registered to
19 distribute controlled substances may lawfully distribute such
20 controlled substances if the distributor and its employees
21 maintain effective controls and procedures to guard against the
22 controlled substances they sell being diverted outside of
23 legitimate medical channels, and distribute controlled
24 substances to be dispensed by doctors and pharmacists in the
25 regular course of professional practice and for legitimate

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1 medical purposes. By contrast, distributors or their employees
2 who sell controlled substances in a manner not authorized by
3 their registration and not in conformity with the law may be
4 found guilty of illegally distributing controlled substances.

5 Distribution of controlled substances is illegal when
6 the distributor ships controlled substances without maintaining
7 effective controls and procedures to guard against those
8 controlled substances they sell being diverted outside of
9 legitimate medical channels or without attempting to do so in
10 good faith.

11 Distributing controlled substances is also illegal
12 when the distributor does not distribute controlled substances
13 to be dispensed by doctors and pharmacists in the regular
14 course of professional practice and for legitimate medical
15 purposes or does not attempt to do so in good faith.

16 Good faith in this context means the honest exercise
17 of best professional judgment. It means that the distributor
18 acted in accordance with what he or she reasonably believed to
19 be proper distributing practice and what was required by the
20 distributor's registration with the Drug Enforcement
21 Administration.

22 A defendant is under no burden to prove his good
23 faith. Rather, the burden of establishing criminal intent and
24 lack of good faith rests upon the government. Thus, under
25 Count One, the government must prove beyond a reasonable doubt

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1 that the object of the conspiracy was to distribute controlled
2 substances in a manner not authorized by law.

3 If you find that the government has proven beyond a
4 reasonable doubt the two elements that I have just described to
5 you, then there is one more issue that you must decide. I have
6 provided you with a special verdict form asking you to fill in
7 the amount of fentanyl that defendant conspired to unlawfully
8 distribute. You should address this issue and complete that
9 portion of the form if you find the elements of Count One to
10 have been established beyond a reasonable doubt.

11 Basically I am going to give you the verdict sheet.
12 The first question asks: How do you find the defendant,
13 Laurence F. Doud III, with respect to the charge of conspiracy
14 to unlawfully distribute controlled substances? Guilty or not
15 guilty. And it indicates if you find the defendant guilty of
16 Count One, please answer questions two through five.

17 If you find the defendant not guilty of Count One,
18 proceed directly to question five under Count Two.

19 And question two asks: Did the defendant conspire to
20 unlawfully distribute oxycodone? You answer yes or no.

21 Question three asks, did the defendant conspire to
22 unlawfully distribute fentanyl? You answer yes or no.

23 Question four says: What quantity of fentanyl did the
24 defendant conspire to unlawfully distribute? And it asks you
25 whether or not 400 grams or more, at least 40 grams but less

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1 than 400 grams, or less than 400 grams. And again, you answer
2 those questions, if you answer yes to Count One.

3 And then you go on to Count Two, and the question
4 number five asks: How do you find the defendant, Laurence F.
5 Doud III, with respect to the charge of conspiracy to defraud
6 the Drug Enforcement Administration? Guilty or not guilty.

7 And then it has a signature line for your foreperson.
8 Your foreperson should sign once you've answered the
9 appropriate questions, sign the verdict form, date it, and just
10 send us a separate note saying you've reached a verdict when
11 you have reached a unanimous verdict. Don't send out the
12 verdict form. Hold on to the verdict form. When I get your
13 separate note saying you've reached a verdict, I'll bring you
14 out and we'll take the verdict, we'll ask the questions on the
15 verdict form, and take the verdict form from the foreperson
16 here in open court.

17 Now, with regard to Count Two, conspiracy to defraud
18 the DEA. The indictment charges that it was a part and an
19 object of that conspiracy charged in Count Two that the
20 defendant, and others known and unknown, willfully and
21 knowingly, using deceit, craft, trickery, and dishonest means,
22 would and did defraud the United States and an agency thereof,
23 to wit, the Drug Enforcement Administration, thereby impeding,
24 impairing, defeating and obstructing the lawful function of the
25 agency.

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1 With respect to the first element, a conspiracy, as
2 I've already instructed you, is an agreement between two or
3 more persons to violate the law. You should keep in mind all
4 of my instructions that I gave you with respect to conspiracy
5 in general as you are considering Count Two. However, the
6 object or unlawful goal of the conspiracy charged in Count Two
7 is different. I will give you some additional instructions
8 about those objects now.

9 A conspiracy to defraud the United States means that
10 the defendant and his co-conspirators are accused of conspiring
11 to impede, impair, obstruct, or defeat by fraudulent or
12 dishonest means the lawful regulatory and enforcement functions
13 of an agency of the United States. I instruct you that the
14 Drug Enforcement Administration, also called the DEA, is an
15 agency of the United States government.

16 In order to find the defendant impaired, impeded or
17 obstructed a legitimate governmental function, you must find
18 that the object of the conspiracy was to interfere with or
19 obstruct one of the United States' lawful government functions.
20 Not all conduct that impedes the lawful functions of a
21 government agency is illegal. To be unlawful, such conduct
22 must entail fraud, deceit, or other dishonest means. A
23 conspiracy to impede the functions of a government agency by
24 fraud or dishonest means may include such things as providing
25 false information, deceitfully not complying with a regulatory

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1 requirement to provide information, deceitfully processing
2 transactions with incomplete information, or engaging in any
3 other fraudulent or deceptive conduct that would have the
4 effect of impairing the ability of the government agency to
5 determine material aspects of a transaction.

6 By citing these examples, I certainly do not mean to
7 suggest that these are the only actions that could impede the
8 DEA by fraudulent or dishonest means. Nor do I express any
9 view as to whether conduct similar to these examples took place
10 here.

11 Dishonestly obstructing the lawful function of a
12 government agency must be a purpose of the conspiracy, not
13 merely a foreseeable consequence of it. However, defrauding
14 the DEA need not be the defendant's sole or even primary
15 purpose, so long as it is a purpose of the scheme. The intent
16 to defraud the DEA may be incidental to another primary
17 motivation or purpose. Actual contact between the defendant
18 and an official of the United States government is not an
19 element of the crime, nor is it necessary for you to find that
20 the government was subject to any loss of money or property as
21 a result of the conspiracy. It is also not necessary for you
22 to find that the impairment violated any separate law. All
23 that is required is that an object of the conspiracy was to
24 interfere with or obstruct one of the DEA's lawful government
25 functions by deceit, craft, trickery, or by means that are

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1 dishonest.

2 In order to sustain its burden of proof under Count
3 Two of the indictment, the government must also prove beyond a
4 reasonable doubt that one of the members of the alleged
5 conspiracy to defraud knowingly performed at least one overt
6 act, and that this overt act was performed during the existence
7 or life of the conspiracy and was done to somehow further the
8 goal of the conspiracy or agreement.

9 The term "overt act" means some type of outward,
10 objective action performed by one of the members of the
11 agreement or conspiracy.

12 In order for the government to satisfy this element,
13 it is not required that all of the overt acts alleged in the
14 indictment or even any of the overt acts contained in the
15 indictment be proven. Although you must find unanimously that
16 some overt act in furtherance of the conspiracy to defraud has
17 been proved, you do not have to be unanimous as to which act.

18 Similarly, you need not find that the defendant
19 committed the overt act. It is sufficient for the government
20 to show that one of the alleged conspirators knowingly
21 committed an overt act in furtherance of the conspiracy, since
22 such an act becomes, in the eyes of the law, the act of all the
23 members of the conspiracy.

24 You are further instructed that the overt act need not
25 have been committed at precisely the time alleged in the

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1 indictment. It is sufficient if you are convinced beyond a
2 reasonable doubt that it occurred at or about the time and
3 place stated. However, you must find that the overt act
4 occurred while the conspiracy was still in existence.

5 You should bear in mind that the overt act standing
6 alone may be an innocent lawful act. Frequently, however, an
7 apparently innocent act sheds its harmless character if it is a
8 step in carrying out, promoting, aiding or assisting a
9 conspiratorial scheme. You are therefore instructed that the
10 overt act does not have to be an act which in and of itself is
11 criminal or constitutes an objective of the conspiracy.

12 The government does not need to prove an overt act
13 with respect to Count One. This instruction applies only to
14 Count Two.

15 Now, as I have just instructed you, the government
16 must prove beyond a reasonable doubt that the defendant acted
17 knowingly. If the defendant lacked knowledge that controlled
18 substances were being diverted and sold illegally, you must
19 find him not guilty, even if the government proves that the
20 only reason the defendant lacked such knowledge was because he
21 was careless, negligent, or even foolish in failing to obtain
22 that knowledge.

23 As the parties have referred to, in determining
24 whether the defendant acted knowingly, you may consider whether
25 the defendant deliberately closed his eyes to what would

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1 otherwise have been obvious to him. If you find beyond a
2 reasonable doubt that the defendant acted with, or that the
3 defendant's ignorance was solely and entirely the result of a
4 conscious purpose to avoid learning the truth, then this
5 element may be satisfied. However, guilty knowledge may not be
6 established by demonstrating that the defendant was merely
7 negligent, foolish or mistaken.

8 If you find that the defendant was aware of a high
9 probability that controlled substances were diverted and sold
10 illegally, and that the defendant acted with deliberate
11 disregard of those facts, you may find that the defendant acted
12 knowingly. However, if you find that the defendant did not
13 knowingly and intentionally join a conspiracy to unlawfully
14 distribute controlled substances or to defraud the DEA, he may
15 not be convicted of that particular conspiracy as charged.

16 It is entirely up to you whether you find that the
17 defendant deliberately closed his eyes to the truth and any
18 inferences to be drawn from the evidence on this issue.

19 Each of the two conspiracy counts in the indictment
20 constitute a separate offense or crime. You must consider each
21 count of the indictment separately, and you must return a
22 separate verdict on each count in which the defendant is
23 charged.

24 The indictment refers to various dates or times. It
25 is not essential that the government prove that the conspiracy

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1 alleged started and ended on any specific dates. Indeed, it is
2 sufficient if you find that the conspiracy was formed and that
3 it existed for some time within the dates alleged.

4 Ladies and gentlemen, when you go into the jury room
5 before you begin your deliberations, you should select someone
6 to be your foreperson. The foreperson, as I said, will be
7 responsible for signing all communications to the Court and for
8 handing them to the marshal during your deliberations. We will
9 take your signed and dated verdict sheet from your foreperson
10 when you return to court, and ask your foreperson to announce
11 your verdict in open court.

12 You're about to go in to the jury room and begin your
13 deliberations. If during those deliberations you want to see
14 any exhibits, they will be sent to you in the jury room upon
15 request. If you want any of the testimony read, that can also
16 be done. But please remember that it is not always easy to
17 locate exactly what you want, so be as specific as you possibly
18 can in requesting exhibits or portions of testimony read back
19 if that's what you want.

20 Your requests for exhibits or testimony -- in fact any
21 communication with the Court -- during your deliberations
22 should be made to me in writing, signed by your foreperson, and
23 given to one of the marshals outside your door. I will respond
24 to any requests or questions you have as promptly as possible
25 by sending in what exhibits you desire or by having you return

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1 to the courtroom so I can speak with you in person. In any
2 event, do not tell me or anyone else how the jury stands on the
3 issue of whether or not the defendant's guilt has been proven
4 until after a unanimous verdict is reached. When you have
5 reached a unanimous verdict, just send us a note indicating
6 that you have reached a verdict, without telling us what that
7 verdict is, and we will take that verdict from you when you
8 come out with the verdict form.

9 Remember, the government to prevail must prove the
10 essential elements of each charge by the required degree of
11 proof. As already explained in these instructions, if it
12 succeeds, your verdict should be guilty. If it fails, it
13 should be not guilty. To report a verdict, either guilty or
14 not guilty, it must be unanimous. You must all agree.

15 Your function is to weigh the evidence in the case and
16 determine whether or not the defendant has been proven guilty
17 of the crimes charged, solely upon the basis of such evidence.

18 Each juror is entitled to his or her opinion. Each
19 should, however, exchange views with his or her fellow jurors.
20 That is the very purpose of jury deliberations, to discuss and
21 consider the evidence, to listen to the arguments of fellow
22 jurors, to present your individual views, to consult with one
23 another, and to reach an agreement based solely and wholly on
24 the evidence if you can do so without violence to your own
25 individual judgment. Each of you must decide the case for

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1 yourself, after consideration with your fellow jurors of the
2 evidence in the case. But you should not hesitate to change an
3 opinion, which, after discussion with your fellow jurors,
4 appears to be erroneous. However, if after carefully
5 considering all of the evidence and the arguments of your
6 fellow jurors you entertain a conscientious view that differs
7 from the others, you are not to yield your position simply
8 because you are outnumbered. Your final vote must reflect your
9 conscientious determination as to how the issues should be
10 decided. Your verdict, whether guilty or not guilty, must be
11 unanimous.

12 If you do not understand or have forgotten any portion
13 of my instructions, you may request that any portion of my
14 instructions be read back or clarified or explained.

15 We need 12 jurors to deliberate. So, Juror No. 13,
16 Ms. Knutsen; Juror No. 15, Mr. Franco; and Juror No. 16,
17 Ms. Rosendary, I'm going to excuse you from any further jury
18 service at this time. I want to thank you for your jury
19 service. Obviously, we lost one juror. If we lost more
20 jurors, your presence would be required. But, we are going to
21 use the first 12 jurors in the box to deliberate on this case.
22 So, your lunch didn't come. If you want to stick around for
23 it, I think it's supposed to be here between 12 and 12:30.
24 Otherwise I am going to discharge you from any further jury
25 service and with thanks of the Court and thanks of the parties.

M213DOUF

Charge

1 And obviously, particularly under COVID conditions, it's more
2 of a burden than even usually it is. And your services were
3 really required to make sure that, after two weeks of
4 testimony, that we have a full jury to decide this case.

5 So, I'm going to thank you for your jury service and
6 I'm going to excuse you from any further jury service at this
7 time. Thank you. You can leave. And as I say, if you want to
8 stick around for lunch, if you have anything in the jury room
9 that belongs to you, please take that out, because I am going
10 to send the jury down to the jury room with the marshal to
11 begin their deliberations.

12 Did you have something?

13 MR. GOTTLIEB: I didn't know if we were going to have
14 a brief sidebar, your Honor.

15 THE COURT: Did we need to?

16 MR. GOTTLIEB: Yes, please.

17 (At the sidebar)

18 THE COURT: Does government have any exceptions to the
19 charge?

20 MR. ROOS: No, nothing from the government.

21 MR. GOTTLIEB: Just one, your Honor. Under object of
22 the conspiracy. Page 58. I thought in our conference the
23 other day, this issue had been resolved, so I could be wrong.
24 But the last sentence which reads, the offense alleged in Count
25 One is simply that the defendant participated in the conspiracy

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Charge

1 knowing that the object of the conspiracy was to distribute
2 oxycodone and fentanyl. It ends there.

3 I think properly, and especially because you say
4 simply, it should read that the object of the conspiracy was to
5 distribute oxycodone and fentanyl for unlawful purposes. And I
6 would ask that that is a more complete statement as to what
7 Count One's offense is.

8 THE COURT: Excuse me. First of all, I'll hear from
9 the government. I don't have a recollection that you did raise
10 this issue. And two, it seems to me that the instructions as a
11 whole have made that clear. And I think that would simply be
12 repetitive at this point. But let me hear from the government.

13 MR. BURNETT: So I agree. First, I agree this did not
14 come up during the charging conference. And second, that the
15 instructions as a whole -- and as you instructed the jury, the
16 instructions need to be considered as a whole -- clearly state
17 they need to find there was an agreement to distribute
18 controlled substances unlawfully. I also would add that the
19 proposed addition is actually not legally accurate. For
20 unlawful purposes is not -- the purposes is confusing. What
21 the object is to distribute unlawfully, period. That's what
22 the instructions said.

23 MR. GOTTLIEB: Well, I beg to differ. The conspiracy,
24 the object of the alleged conspiracy was not simply to
25 distribute oxycodone and fentanyl. And again, your Honor, once

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Charge

1 it was presented to the jury by saying the offense alleged in
2 Count One is simply, then there must be a more complete
3 explanation as to what the object was, and it is a misstatement
4 to say that the object of the Count One conspiracy is merely to
5 distribute oxycodone and fentanyl. It has to be for --

6 MR. JANEY: Unlawfully.

7 MR. GOTTLIEB: The word unlawfully has to be included
8 at some point.

9 MR. ROOS: That's the whole next page.

10 MR. BURNETT: And the page before.

11 THE COURT: I don't disagree with you that the jury
12 should have that complete instruction. But I think the jury
13 does have that complete instruction. And again, I don't think
14 this was an issue that you raised. And also, it talks about
15 being -- I'm sorry. Can I see that again? It talks about the
16 defendant participating in a conspiracy. I defined what the
17 definition of conspiracy is. And the definition of conspiracy
18 includes exactly what you say that you want the addition here.
19 So I don't think that it's timely for me to try to go back
20 through this with the jury. I think they have clear
21 instruction about what their responsibilities are, and what you
22 all gave me to apply to this case. I think it is
23 repetitiveness at that point, is not necessary, and I'm not
24 sure this is the timely request because I don't have a
25 recollection we discussed this.

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Charge

1 MS. ROTHMAN: Your Honor, we have one thing.

2 MR. ROOS: Not substantive. Which is the excused
3 jurors, I don't know if we should tell them to, like, not
4 discuss and sort of watch their phones just in case the jury
5 deliberates another day and someone gets sick. Sort of leave
6 it to you.

7 THE COURT: I don't keep alternates unless both sides
8 are going to agree that if we lose one of these 12, that you're
9 going to allow a substitution of the alternate days into their
10 deliberations. So do you want me to keep the alternates for
11 that purpose? Are you agreeing if we lose a deliberating juror
12 during deliberations that we can substitute an alternate?

13 MR. GOTTLIEB: Can I suggest this. Perhaps at least
14 for a short while today, for the balance of the day, to keep
15 them here.

16 THE COURT: Again, you have to commit one way or the
17 other. If you are not going to commit to having the juror
18 substitute. If we lose a juror, then, I'm not going to keep
19 these jurors in.

20 MR. GOTTLIEB: See, I would commit, I would commit for
21 today. After today, I would reserve my right to decommit.

22 THE COURT: No. You can't get away with that part.
23 I'm not keeping these alternates. It doesn't make sense. I'm
24 not going to have them sitting in a separate room to wait and
25 see when you decide you want to let us know.

M213DOUF

1 MR. JANEY: Can I ask, what is your Honor's practice
2 if we lose one of the 12?

3 THE COURT: Then we're going to adjourn until that
4 juror is well.

5 MR. JANEY: Okay.

6 (In open court)

7 THE COURT: Can we swear in the marshal.

8 (Marshal sworn)

9 THE COURT: Ladies and gentlemen, I am going to ask
10 that you begin your deliberations at this time. Your lunch
11 should be here within the next 15 to 30 minutes. Thank you.

12 (Jury begins deliberations. Time noted: 12 p.m.)

13 THE COURT: Just make sure you agree which exhibits
14 are in evidence. And if the jury asks for an exhibit, as long
15 as both sides agree that that's what they have asked for, I
16 will send it straight in and we don't have to reassemble. If
17 they ask for testimony, then we'll reassemble and see how to
18 respond to that request, or if they ask for further jury
19 instructions or any other note, we'll do that.

20 I would just sort of hang around for the next 20
21 minutes or so in case we get a note immediately, particularly
22 for exhibits. I will notify you once they get their lunch. As
23 soon as they get their lunch, then I would take lunch, and as
24 long as we can reach you and you can be back in the courtroom
25 within 10 minutes, that's sufficient. You don't have to stay

M213dou2

Deliberations

1 in the courtroom.

2 MS. ROTHMAN: Your Honor, should we pass our cell
3 phones to your clerk?

4 THE COURT: Yes. She'll take all that information so
5 we can get ahold of you if we get a note from the jury.

6 (Recess pending verdict)

7 (In open court; jury not present)

8 THE COURT: I think we're going to go ahead and
9 adjourn for the day and have them come back tomorrow and
10 continue deliberations, so let's bring the jury up. I'll tell
11 them to come back tomorrow at 9:45. When everyone arrives,
12 they can continue their deliberations. They don't have to wait
13 for us.

14 We have a note that reads: We would like to adjourn
15 for day. But request the following exhibits and e-mails for
16 consideration when we resume tomorrow morning. And it has a
17 list of exhibits and a list of e-mails. I'll hand that to the
18 parties, if you can pull all of that together by 9:30 tomorrow
19 morning, then we can send it right into the jury room when they
20 continue at 9:45 with their deliberations.

21 Can you bring in the jury, please.

22 (Jury present. Time noted 5:02 p.m.)

23 THE COURT: Okay, ladies and gentlemen, we have your
24 note and we're going to adjourn for the day. We're going to
25 pull together the exhibits that you've requested and have them

M213dou2

Deliberations

1 ready for you tomorrow morning. I am going to ask that you be
2 back in the jury room before 9:30 to continue your
3 deliberations.

4 Don't discuss the case until all 12 of you have
5 arrived. We will try to get the exhibits in there before you
6 arrive. And you don't have to wait for us, as soon as all 12
7 of you arrive, just go ahead and continue your deliberations
8 and we'll wait to hear from you again.

9 All right. So have a good evening. I'll see you
10 tomorrow morning at 9:45.

11 (Jury excused)

12 THE COURT: Okay, I'll give you the note. See if you
13 can identify the exhibits and pull them together so we can send
14 them into the jury room. Be prepared to do so by 9:30 tomorrow
15 morning.

16 All right. Have a good evening. I'll see you all
17 tomorrow.

18 (Adjourned until February 2, 2022, at 9:45 a.m.)
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